

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

The Development of Operational,
Technical and Spectrum Requirements
For Meeting Federal, State and Local
Public Safety Agency Communication
Requirements Through The Year 2010

WT Docket No. 96-86

To: The Commission

**OPPOSITION
OF THE
AMERICAN PETROLEUM INSTITUTE
TO
PETITIONS FOR RECONSIDERATION**

The American Petroleum Institute ("API"), by its attorneys and pursuant to Section 1.429(f) of the Rules and Regulations of the Federal Communications Commission ("Commission" or "FCC"), respectfully submits this Opposition in response to Petitions for Reconsideration of the First Report and Order ("Order") released in the above-captioned matter on September 29, 1998.^{1/} API is particularly concerned that qualified non-governmental organizations ("NGOs") be permitted unobstructed access to the 700 MHz interoperability channels through the licensing process as envisioned in the Order. To that end, API opposes the imposition of mechanisms, which would make this

^{1/} 63 Fed. Reg. 58685 (November 2, 1998).

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interoperability spectrum less accessible to NGOs, requested by the Association of Public-Safety Communications Officials-International, Inc. ("APCO"), the State of California ("California"), New York State Technology Enterprise Corporation ("New York"), and the National Public Safety Telecommunications Council ("NPSTC") in their Petitions for Reconsideration.

I. PRELIMINARY STATEMENT

1. API is a national trade association representing approximately 350 companies involved in all phases of the petroleum and natural gas industries, including exploration, production, refining, marketing, and transportation of petroleum, petroleum products and natural gas. Among its many activities, API acts on behalf of its members as spokesperson before federal and state regulatory agencies. The API Telecommunications Committee is one of the standing committees of the organization's Information Systems Committee. The Telecommunications Committee evaluates and develops responses to state and federal proposals affecting telecommunications facilities used in the oil and gas industries.

2. Reliable two-way land mobile radio communications systems are essential tools in almost every phase of the petroleum and natural gas industries. These communications must be maintained during exploration activities, after oil and gas production is established for the management of individual wells and of entire fields and

pipeline gathering systems, and for the safe and efficient operation of long-distance, crude, petroleum products and natural gas pipelines. These same types of reliable communications are absolutely critical in petroleum refineries where the safety of personnel and adjacent populations, including the surrounding environment, demand clear channels of communication. Even in the marketing and distribution of these energy sources, mobile radio continues to play an important role in the transfer of natural gas at city gates, and the loading and delivery by rail, tank trucks and marine vessels of refined petroleum products to industrial, commercial and residential customers. Even though these systems are used along with the employment of other precautions to avoid emergency incidents, there are occasions that require emergency responses by these companies as well as by public safety agencies. Interoperable telecommunications systems can make a significant contribution to an effective response.

3. The FCC provided some relief in its Order by establishing a band plan and adopting service rules necessary to commence the licensing process in the newly-reallocated public safety spectrum at 764-776 MHz and 794-806 MHz ("700 MHz band"). The FCC designated 2.6 MHz of spectrum in the 700 MHz band for interoperability purposes and provided eligibility for its licensing and use by NGOs approved by an appropriate state or local governmental entity.

4. As noted by API in its Comments filed in response to the Third Notice of Proposed Rulemaking in this proceeding, there is a great need for interoperable channels. Oil and gas companies have a limited allocation of spectrum for oil spill containment and cleanup operations. This allocation includes two low band, four VHF, and a single pair of UHF channels. 47 C.F.R. § 2.106, n. NG 112. Although this allocation has provided the core of emergency communications response packages for many years and has been sufficient in some instances, it is woefully inadequate for a major incident. To make matters worse, the Commission has proposed to allocate one-half of the UHF oil spill containment channel pair to the Non-Voice, Non-Geostationary Mobile Satellite Services ("Little LEOs").^{2/} API has repeatedly sought an adequate spectrum allocation to use in responding to these types of emergency situations.^{3/}

5. In Comments filed in response to the Second Notice of Proposed Rule Making, API urged the Commission to designate a minimum of twenty channel pairs from the new allocation for emergency, "mutual aid" use by both governmental entities and private parties with public safety responsibilities. API is very pleased with the

^{2/} See, *Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to the Second Processing Round of the Non-Voice, Non-Geostationary Mobile Satellite Service*, IB Docket No. 96-220, Notice of Proposed rule Making (Oct. 29, 1996); *Amendment of Part 2 of the Commission's Rules to Allocate the 455-456 MHz and 459-460 MHz Bands to the Mobile-Satellite Service*, ET Docket No. 97-214, Notice of Proposed Rule Making (Oct. 14, 1997).

^{3/} For example, see API Comments in Gen. Docket No. 90-314 at ¶¶ 62-81 (October 1, 1990).

decisions reflected in the Order to designate 2.6 MHz of spectrum for interoperable systems and provide eligibility for its licensing and use by NGOs approved by an appropriate state or local governmental entity. (Order at ¶ 55).

6. In its Order, the FCC concluded that NGOs are eligible for licensing in the 700 MHz band when expressly authorized by a state or local government entity whose mission is the oversight of or provision of such service. (Order at ¶56). The FCC provided that an NGO may be licensed on the 700 MHz band once it submits to the Commission a written statement by the state or local governmental entity that is authorizing the NGO to use 700 MHz band spectrum. (Id.) The FCC specified that the authorizing state or local government entity's authorization must certify that its mission includes oversight of or responsibility for providing public safety services. (Id.) Furthermore, the Commission will issue 700 MHz band licenses to NGOs with the following condition:

"This authorization is granted subject to the condition that frequencies in the 764-776 and 794-806 MHz bands shall be used exclusively for public safety services, see 47 U.S.C. Sec. 337. If at any time the State or local governmental entity that authorized the applicant/licensee cancels, revokes, or terminates its authorization of the applicant/licensee: (1) in the case of an applicant, such applicant's pending application shall be dismissed automatically; and (2) in the case of a licensee, such licensee's authorization shall terminate automatically and immediately revert to the Commission."

(Order at ¶58.)

7. APCO, California, New York and NPSTC filed Petitions for Reconsideration of the FCC's Order. In its Petition for Reconsideration, APCO urged the FCC to make NGO frequency assignments contingent on approval by the relevant Regional Planning Committee ("RPC"). California was concerned about NGOs receiving approval from the appropriate government agency and to minimize this problem, it requested that the RPCs be given authority and be required to review all "letters of authorization" and concur that the letter is from an appropriate government entity. California was concerned too that the radio systems designed by the NGOs be appropriate to the jurisdictional boundaries of the governmental entities being served, and it urged the Commission to require NGOs to design radio systems which are appropriate to the area for which coverage is required, even if that means designing multiple systems to cover non-contiguous areas which are in close proximity to each other. (California Petition at p.10). Also, California urged that the license held by the NGOs be subject to periodic reaffirmation by the RPC as contract services change. New York and NPSTC recommended that NGOs operate under the licenses held by the government entity instead of being licensed separately with the written authorization of the government. (New York Petition at p.12, NPSTC Petition at p. 5).

II. OPPOSITION

8. The Commission's NGO licensing scheme already is a compromise. The Commission noted that the 1997 Budget Act did not "expressly state that NGOs must

obtain formal governmental approval to be licensed in the 700 MHz band.” (Order at ¶57). To ensure that the public safety spectrum would be utilized only by eligible NGOs for public safety purposes, the Commission provided for pre-authorization from a government entity. However, in doing so, the Commission stated its intent of minimizing “information collection, submission and other burdens for all interested parties.” (Order at ¶57).

9. To respond to situations such as oil spills, many API members have emergency response equipment, including telecommunications facilities, assembled and stored in shipping containers and/or vehicles for expedited transport to an incident site, regardless of its geographic location. A streamlined approval process to use the 700 MHz interoperable channels is required so that these API members may use these newly designated public safety interoperable channels as soon as these emergency response communication equipment packages are needed to respond to an emergency situation, such as an oil spill, anywhere throughout the country, both onshore and offshore.

10. In recent years, NGOs with responsibility for safety and the environment have joined together in real life response situations, as well as in drill exercises under an Incident Command System (“ICS”) with government organizations (“GOs”). The ICS process requires that multiple organizations blend into one for the duration of the event. Radio communications are handled by either the NGO or the GO loaning the other

equipment, or by letting a common radio operator relay messages. There have also been some reported instances where either the NGO or the GO has allowed the other organization to operate equipment under the host's license. These arrangements have worked fairly well as an "after the oil is on the ground" plan. The weaknesses have been twofold. First, there has been a general shortage of interoperability channels. The second and more serious problem is not being able to be licensed and pre-programmed with the correct frequencies. Oil and gas companies have had to live with a situation where they conduct drills using the oil spill frequencies but, in real life, have to program in the GO's channel(s) while on the scene wasting valuable time! Being pre-authorized for the 700 MHz interoperability channels will be a valuable resource.

11. The Commission's conditions on NGO licenses in the 700 MHz band are already sufficiently narrow to ensure that qualified NGOs use the public safety spectrum to provide public safety services. Obtaining authorization from the state or local government entity whose mission is the oversight of or provision of the public safety service to be provided by the NGO will be a challenging task in and of itself for API members who wish to use the 700 MHz band to respond to emergency situations or in mutual aid situations. The operations of these members are not contained in one locality or even in one state. These member companies operate throughout the United States and off the coast of the United States. These NGOs will have to seek authorization from several local and state government entities to be prepared to use the 700 MHz

interoperability channels wherever there is an emergency situation throughout its service area. For example, even a smaller pipeline company in the West like Colorado Interstate Gas Company ("CIG") which traverses 6 states and 43 counties will face a cumbersome administrative process to gain authorization to use the 700 MHz interoperability channels along its rights-of-way. CIG will have to ascertain which are the appropriate government entities whose mission is the oversight of emergency response to industrial accidents and to obtain authorization from these government entities (at the very least, six) to be able to use the 700 MHz interoperability channels to respond to an emergency anywhere along its pipeline system. Other pipelines, which may traverse many more jurisdictions from the Southwestern to the Northeastern states, will face an even greater administrative burden identifying and seeking authorization from the appropriate government entities.

12. Seeking additional approval from the RPCs or operating under the license of a GO will only add another step in the licensing process and will make the 700 MHz band less accessible to oil and gas companies whose missions include the prevention and containment of hazardous situations. To appease the concerns of APCO and California for the RPCs to review authorization requests while maintaining the authorization process adopted by the Commission, API recommends that the Commission give serious consideration to allowing GOs to give their proxy to their respective RPCs to directly authorize NGO use of the 700 MHz interoperability channels.

III. CONCLUSION

13. The Commission's rules should facilitate the licensing of NGOs eligible to use the 700 MHz band interoperable channels. It should not create any more procedural hurdles than are absolutely necessary. API urges the Commission to reaffirm its decision to permit NGO licensing of the public safety interoperability spectrum as provided in the Order.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute respectfully urges the Federal Communications Commission to act in a manner fully consistent with the views expressed herein.

Respectfully submitted

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CERTIFICATE OF SERVICE

I, Loretto Scott, a secretary with the law firm of Keller and Heckman LLP, do hereby certify that a copy of the foregoing Opposition of the American Petroleum Institute to Petitions for Reconsideration was served this 5th day of February 1999 on the following persons by first class United States mail, postage prepaid:

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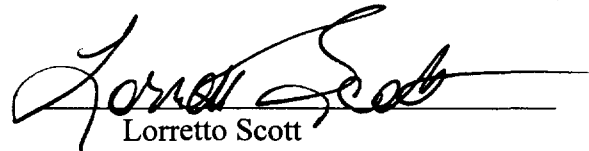
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